IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal 634 of 2000
Decided on: 25.09.2007

State of H P — Appellant

Versus

Purshotam Chand and others — **Respondents**

Coram:

The Hon'ble Mr.Justice Surinder Singh.J.

Whether approved for reporting ?[1] *No.*

For the appellant : **Shri Som Dutt Vasudeva, Additional Advocate General.**

For the Respondent **Ms Madhu Sharma, Advocate, vice Mr Ashwani K. Sharma, Advocate.**

Surinder Singh, J. (Oral)

The respondents were acquitted by the learned trial court for offences under Sections 323, 325 read with Section 34 of the Indian Penal Code.

The judgment of acquittal has been assailed by the appellant-State in this appeal on the grounds that the learned trial court had taken serious note of minor contradictions, which were bound to occur because of delay in the examination

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? yes***

of the witnesses of the prosecution and further that the statement of the injured was not properly appreciated which has resulted into miscarriage of justice.

I have heard Shri Som Dutt Vasudeva, learned Additional advocate General for the appellant-State and Ms. Madhu Sharma, Advocate, appearing for the respondent and have carefully gone through the evidence on record.

Precisely, the case of the prosecution has been that the respondents allegedly have beaten up one Milkhi Ram with stones and kicks, causing injury to his person. The complainant reported the matter to the police. Police got him medically examined. Injury was x-rayed, which showed communicated fracture of lower mandible, as such a case under sections 325, 323 read with Section 34 of the Indian Penal Code was formally registered against the respondents.

After completion of the investigation, a challan was presented in the court for trial. The respondents were charge sheeted under the aforesaid sections, to which they pleaded not guilty and claimed trial.

To prove their case, the prosecution examined Milkhi Ram (PW-2), his son Kuldeep (PW1), Jagan Nath (PW3), Dr.V.K.Kapila (PW4), Tilak Raj (PW5), Dalgir Singh Head Constable (PW6), Subhash Chand Constable (PW7) and I.O. Manohar Lal Head Constable (PW8). The respondents were also examined under Section 313 Cr.P.C. whereby they alleged their false implication.

The respondents had raised the defence that Milkhi Ram complainant had consumed liquor and under the influence of the liquor he fell down and sustained injuries. The respondents averred that the case was foisted against them on account of old enmity and civil litigation. Thus in order to put pressure a false case was manipulated. However, no defence was led.

The trial court acquitted the respondents on the grounds that there was no cogent evidence regarding fracture of left mandible having been caused by the respondents. There were major contradictions in the statements of the witnesses. No independent witness was examined despite their availability. Thus the learned trial court also did not find substance in the authenticity of the prosecution case.

I have reappraised the evidence on record. First of all, I would like to mention here that in the F.I.R. Ex.PW8/B, the complainant has only named Purshotam Chand and Tarsem Chand as the assailants but as PW-2 the complainant has tried to implicate respondent No.3 and also attributed injury to the lower mandible caused by one Suti, who is not an accused in the instant case. Even his son Kuldeep (PW1) has gone to the extent of saying that his father was beaten up by four accused namely Purshotam, Tarsem Chand, Bidhi Chand and Joginder Kumar whereas in the instant case there are only three accused except Bidhi Chand. The witness has introduced Bidhi Chand, whose name neither figure in the F.I.R. nor during the police investigation. In order to lend strength to their case, the prosecution examined Jagan Nath (PW3), who stated that the complainant had told him that the respondents including Bidhia were beating him and when he accompanied the complainant, the respondents also started beating him. He had raised hue and cry and many villagers gathered there. Milkhi Ram complainant fell unconscious and the respondents fled away from the place of occurrence, but in the cross-examination he stated that all the

teeth of PW-2 were broken whereas another alleged eye witness Tilak Raj (PW5) in his cross-examination stated that none of teeth of the complainant were broken. The complainant and his witnesses have admitted that there was a civil litigation going on with respect to *Chaultia* land interse the parties.

Thus, on legally scanning and on close scrutiny I have found major contradictions in the prosecution case, as pointed out above, which makes the prosecution case quite shaky, un-worthy of credence because of contradictions and improvements, which cannot be relied upon to sustain the conviction of the respondents in any manner. Therefore, the view taken by the learned trial court is not perverse, but it is borne out from the record. Therefore, there is no scope for interference in the impugned judgment by this Court in appeal.

Accordingly, the appeal is dismissed.

The respondents are discharged of their bail bonds, entered upon by them at any stage, during the proceedings of the case.

September 25,2007 (Surinder Singh),J.
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